



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1998

Mr. Ryan Tredway
Staff Attorney
Legal and Compliance Division
MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0699

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114018.

The Texas Department of Insurance (the "department") received an open records request for "the latest Home State County Mutual private passenger rate filings for the Insurance Depot program including the rates, rules and any actuarial documentation supporting the rates." You do not contend that any of the requested information is excepted from required public disclosure, but rather you have asked this office to determine, pursuant to section 552.305 of the Government Code, whether the requested information must be released to the requestor.

Consequently, we notified representatives of Home State County Mutual Insurance Company ("Home State County") that we received your request for an open records decision regarding their rate filings. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision Nos. 575 (1990), 542 (1990) (determining that statutory predecessor to section 552.305 of Government Code permits governmental body to rely on interested third party to raise and explain applicability of exception to required public disclosure in certain circumstances).

A representative of Home State County timely responded to our notice and contends that the filings are excepted from required public disclosure pursuant to section 552.110 of the Government Code. Section 552.110 of the Government Code excepts from required public disclosure "[a] trade secret or commercial or financial information obtained from a

person and privileged or confidential by statute or judicial decision.” Home State County contends that its filings constitute both “trade secrets” and confidential “commercial or financial information” under section 552.110.

A “trade secret”

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). *See also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret.¹ This office must accept a claim that information is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the

¹These six factors are

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979).

claim as a matter of law. Open Records Decision No. 552 (1990) at 5. However, where no evidence of the factors necessary to establish a trade secret claim is made, we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983). In this instance, Home State County has specifically argued that the six factors apply to its filings. Because Home State County has made a *prima facie* case for exemption and this office has received no rebuttal of those claims, we conclude that the information at issue may be withheld from the public as trade secrets under section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/RWP/glg

Ref.: ID# 114018

Enclosures: Submitted documents

cc: Ms. Rae M. Taylor, FCAS, MAAA
Actuary and Chief Financial Officer
Young America Insurance Company
P.O. Box 224467
Dallas, Texas 75222-4467
(w/o enclosures)

Mr. James D. Maxwell
Insurance Depot
13702 Gamma Road
Dallas, Texas 75244
(w/o enclosures)